

129 FERC ¶ 61,080
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

ANR Pipeline Company

Docket No. CP08-465-000

ORDER DIRECTING PARTIES
TO ENTER INTO PROTECTIVE AGREEMENT

(Issued October 29, 2009)

1. On August 24, 2009, the Commission issued a certificate of convenience and necessity to ANR Pipeline Company (ANR) authorizing the construction and operation of approximately 8.9 miles of 30-inch pipeline loop and related facilities in Rock County, Wisconsin.¹ In the order, the Commission denied Wisconsin Electric Power Company's and Wisconsin Gas LLC's (jointly, We Energies) request to delay the proceeding pending the outcome of We Energies' request under the Freedom of Information Act (FOIA) to obtain access to ANR's transient model, which had been filed on July 23, 2009.² ANR has claimed that this material is both commercially sensitive and critical energy infrastructure information (CEII) and, therefore, should not be made public.³ We Energies' FOIA request was denied on September 15, 2009.
2. In declining to delay this proceeding, the Commission noted that there was no indication that ANR had denied any request by We Energies to obtain the desired information pursuant to a protective agreement within the context of this proceeding (as opposed to under FOIA). Further, the Commission pointed out that We Energies'

¹ *ANR Pipeline Co.*, 128 FERC ¶ 61,183 (2009).

² We Energies initially requested that the Commission require ANR to file its transient model in a November 24, 2008 supplement to its initial protest of ANR's application. As indicated, ANR filed its model on July 23, 2009 and We Energies filed a FOIA request to obtain access to it.

³ ANR claimed the transient model was entitled to confidential treatment under section 388.112 of the Commission regulations. 18 C.F.R. § 388.112 (2009).

opposition to ANR's project appeared to have little to do with system flows or any potential for adverse impacts on existing services, but instead, focused on an allegation that under an existing provision of ANR's tariff, ANR is required to give We Energies and certain other shippers subject to mandatory flow requirements at ANR's Marshfield receipt point the opportunity to transfer their receipt points to other locations prior to proceeding with this project.

3. On September 23, 2009, We Energies filed a request for rehearing of the August 24, 2009 order which is pending. Among other things, We Energies maintains that it had sought to enter into a protective agreement with ANR in order to obtain material other than the transient model that had also been designated as confidential by ANR, but that ANR had refused to enter into such an agreement. Assuming that ANR would again refuse to enter into a protective agreement with regard to the transient model, We Energies states it sought to obtain access to the material through a FOIA request. We Energies further contends that it has argued in this case that ANR's proposed project will significantly change flows on ANR's system in a manner that will be detrimental to it.

Discussion

4. The Commission will address We Energies' various requests for rehearing in a subsequent order in this proceeding. However, before we do so, we believe that it is appropriate for We Energies, as a party to this proceeding, to have access to information filed by ANR in support of its application for which it requested special treatment under section 388.112 of the Commission's regulations. Since ANR has apparently refused to provide such access voluntarily, we hereby order ANR to enter into a protective agreement with We Energies and to provide We Energies access to the non-public information it has requested within 10 days of the date of this order.

5. While there is a model protective order on the Commission's web site⁴ which the parties may use as a basis for drafting their agreement, protective agreements should be drafted in light of the facts of a particular case. The goal is to have "the least restrictive [agreement] that will accomplish the purpose of protecting against the harm of disclosure."⁵ The burden is on the party seeking to safeguard the information to show that the protective agreement does not adequately protect its interests.⁶ Should the parties desire additional assistance, they may make use of the Commission's designated

⁴ A link to the model protective order can be found on the Commission's web site at <http://www.ferc.gov/legal/admin-lit/model-protective-order.pdf>.

⁵ *Mojave Pipeline Co.*, 38 FERC ¶ 61,249, at p. 61,842 (1987).

⁶ *Id.*

on-call settlement judge. However, the use of such a procedure shall not extend the 10-day deadline for production of the requested material.

The Commission orders:

Within 10 days of the issuance of this order, ANR shall provide We Energies access to the non-public information it seeks under the provisions of a protective agreement and shall file an executed copy of the agreement with the Commission in the docket of the proceeding. We Energies shall have 14 days from the receipt of such information to file a further pleading limited to matters raised by the newly-obtained information.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.